

**REMARKS*****Remaining Claims***

Claims 5, 7, 16, have been canceled and Claims 1, 21, 23 have been amended to more clearly point out and distinctly claim the invention. Supports for Claim 1 amendments can be found from Claim 5 and paragraph 68 (Table 1) of the present invention as the US patent application publication of US 2004/0142829 A1. After these amendments are entered, eighteen (18) claims (Claims 1, 3 – 4, 6, 8-10, 12 – 14, and 17-24) remain under consideration in this application.

***CLAIM REJECTIONS UNDER 35 U.S.C §112***

Claims 1, 21 and 23 contain the trademark/trade name poloxamer and tyloxapol. Where a trademark or trade name is used in a claim as a limitation to identify or describe material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph.

The 112 rejection on claims 1, 21 and 23 have been overcome by amending the claims 1, 21 and 23.

***Claim Rejections under 35 U.S.C §102(e)/ §103 – Hu, et al.***

Claims 1, 3 – 8, 12- 14, 17 – 19 are rejected under 35 USC §102(e) as being anticipated by or, in the alternative, under 35 USC §103(a) as obvious over Hu, *et al.* (6,037,328).

Hu, et al. neither teach nor suggest such a lens care composition which comprising a buffer, tyloxapol, 0.001% to 0.5% of poloxamer, dexpantenol, and less than 1 ppm of a polymeric antimicrobial agent; wherein said solution has a tonicity of 200 to 450 mOsm/kg, a pH of between 6 and 8; wherein the buffer is a phosphate buffer at a concentration less than 0.1%, and the total concentration of chloride ions and phosphate ions below 1500 ppm, and wherein said solution will result in at least a 1 log reduction in *C. albicans* within 15 minutes of contact as required by the currently amended Claim 1. As such, the present invention as currently amended claim 1 is clearly not anticipated by the cited reference (Hu, et al.).

Applicants respectively submit that a prima facial case of obvious has not been established, because the cited reference (Hu, et al.) neither teach nor suggest all of the limitations of the present invention as claimed in claim 1.

Claims 3 – 8, 12-14, and 17 - 19 are directly or indirectly on Claim 1 and likewise, cannot be anticipated or rendered obvious by the cited reference (Hu, et al.). Accordingly, Applicants respectfully request that this rejection be withdrawn.

**CLAIM REJECTIONS UNDER 35 U.S.C §103(A).**

Claims 9-10 and 16 are rejected under 35 USC §103(a) as obvious over Hu et al. (US 6,037,328) in view of Schwind et al. (2002/015961). For the following reasons, the Examiner's rejection is respectfully traversed.

Applicants respectfully submit that a prima facie case of obviousness has not been established as the cited references, alone or in combination, do not disclose or suggest all the claim limitations. The cited reference neither discloses nor suggests about an aqueous contact lens disinfecting solution comprising a buffer, tyloxapol, 0.001% to 0.5% of poloxamer, sorbitol, dexpanthenol, and less than 1 ppm of a polymeric antimicrobial agent; wherein said solution has a tonicity of 200 to 450 mOsm/kg, a pH of between 6 and 8; wherein the buffer is a phosphate buffer at a concentration less than 0.1%, and the total concentration of chloride ions and phosphate ions below 1500 ppm, and wherein said solution will result in at least a 1 log reduction in C. albicans within 15 minutes of contact as required by the claim 9. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Claim 20 is rejected under 35 USC §102(e) as being anticipated by or, in the alternative, under 35 USC §103(a) as obvious over Hu, et al. (6,037,328) in view of Groemminger, et al. (US 6,872,695).

Claim 20 is indirectly dependent from Claim 1. As discussed above. With regard to Hu et al. the currently amended claim 1 is believed to be in the condition of allowance. Groemminger, et al. does not provide further teachings that would render the invention the currently claimed 1 obvious. Accordingly, Applicants respectfully request that this rejection be withdrawn.

**Claim Rejections under 35 U.S.C §103 – Schwind, et al. in view of Groemminger, et al.**

Claims 21-24 are rejected under 35 USC §103(a) as being unpatentable over Hu et al. (6,037,328) in view of Schwind, et al. (WO 2002/0155961), and further in view of Groemminger, et al. (US 6,872,695). For the following reasons, the Examiner's rejection is respectfully traversed.

Applicants respectfully submit that a prima facie case of obviousness has not been established as the cited references, alone or in combination, do not disclose or suggest all the claim limitations, for example, said solution will result in at least a 1 log reduction in C. albicans within 15 minutes of contact as required by the claims 21-24. Accordingly, Applicants respectfully request that this rejection be withdrawn.

**Double Patenting Rejections**

Claims 1,3-10 and 12-14, 16-24 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1 – 4 of 6261546; Claims 1 – 15 of

5858996; Claims 1 – 12 of 5846919; Claims 1 – 5 of 5807585; Claims 1 – 5 of 5683993; Claims 1 – 11 of 5576276;

None of these references claim the currently claimed lens care composition. The references do not teach a solution comprising a buffer, tyloxapol, 0.001% to 0.5% of poloxamer, dexpanthenol, and less than 1 ppm of a polymeric antimicrobial agent; wherein said solution has a tonicity of 200 to 450 mOsm/kg, a pH of between 6 and 8; wherein the buffer is a phosphate buffer at a concentration less than 0.1%, and the total concentration of chloride ions and phosphate ions below 1500 ppm, and wherein said solution will result in at least a 1 log reduction in C. albicans within 15 minutes of contact – all as required by Claim 1 – all as required by Claims 1,3-10 and 12-14, 16-24.

Claims 1, 3-10, 13-24 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims copending Application No. 09/963,972; 11/078,209; 11/212,957 and 11/212,959.


None of these references claim the currently claimed lens care composition. The references do not teach a solution a solution having a solution comprising a buffer, tyloxapol, 0.001% to 0.5% of poloxamer, dexpanthenol, and less than 1 ppm of a polymeric antimicrobial agent; wherein said solution has a tonicity of 200 to 450 mOsm/kg, a pH of between 6 and 8; wherein the buffer is a phosphate buffer at a concentration less than 0.1%, and the total concentration of chloride ions and phosphate ions below 1500 ppm, and wherein said solution will result in at least a 1 log reduction in C. albicans within 15 minutes of contact –all as required by Claims 1,3-10,13-24.

### **CONCLUSION**

In view of the foregoing and in conclusion, Applicants submit that all of the pending claims are now in conditions for allowance.

Should the Examiner believe that a discussion with Applicants' representative would further the prosecution of this application, the Examiner is respectfully invited to contact the undersigned. The Commissioner is hereby authorized to charge any other fees which may be required under 37 C.F.R. §§1.16 and 1.17, or credit any overpayment, to Deposit Account No. 50-2965.

Respectfully submitted,



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